

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA

CHARLES EDWARD POE, )  
vs. )  
Plaintiff, )  
RON WARD, ET AL., )  
Defendants. )  
NO. CIV-04-0912-HE

## ORDER

Plaintiff Charles Edward Poe, a state prisoner appearing *pro se*, instituted this action pursuant to 42 U.S.C. § 1983, alleging the defendants deprived him of property without due process, were deliberately indifferent to his serious medical needs and committed other violations of his constitutional rights. Consistent with 28 U.S.C. §636(b)(1)(B), the matter was referred for initial proceedings to Magistrate Judge Doyle W. Argo, who recommended that a motion to dismiss filed by the defendants be granted due to lack of complete exhaustion of administrative remedies.

The magistrate judge found that, while the plaintiff had exhausted his due process claim related to his confiscated and destroyed gold crown, he had not pursued any grievance related to an equal protection, deliberate indifference to a serious medical need, access to the courts or negligence claim. The magistrate judge suggested the complaint be dismissed without prejudice unless the plaintiff amended it to assert only the exhausted claim. Concurring with Magistrate Judge Argo's analysis, the court adopted his Report and Recommendation and, in its September 6, 2005, Order, advised the plaintiff that unless he amended his complaint to assert only his exhausted due process claim the action would be

dismissed without prejudice.

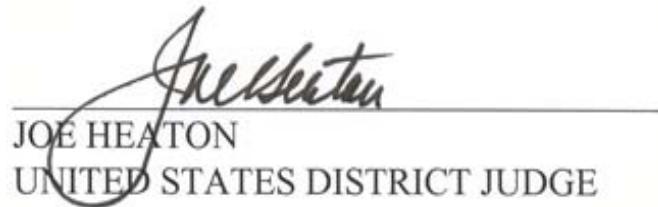
The plaintiff then filed an amended complaint and the matter was referred again to Magistrate Judge Argo. The magistrate judge then dismissed the amended complaint and the plaintiff's second amended complaint because the plaintiff had failed to comply with the court's September order by including additional claims in both pleadings. The magistrate judge has now recommended that the court grant the defendants' motion to dismiss the third amended complaint because, once again, the plaintiff has filed a complaint that includes additional, unexhausted claims. He also recommends that the plaintiff's request for appointed counsel be denied.

The plaintiff has objected to the magistrate judge's Report and Recommendation and has also filed a motion asking the court to reconsider its September decision. As the court is not persuaded its prior decision was erroneous, the plaintiff's motion to reconsider [Doc. # 56] is **DENIED**. The court also agrees with the magistrate judge that, because of the plaintiff's repeated noncompliance with the Court's September 5, 2006, order, the defendants' motion to dismiss should be granted.

Accordingly, the court adopts Magistrate Judge Argo's Report and Recommendation, **GRANTS** the defendants' motion to dismiss [Doc. #52], **DISMISSES** the third amended complaint and the action without prejudice, and **DENIES** the plaintiff's request for appointed counsel [Doc. # 51].

**IT IS SO ORDERED.**

Dated this 20<sup>th</sup> day of June, 2006.



Joe Heaton  
JOE HEATON  
UNITED STATES DISTRICT JUDGE